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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL KARL McNEIL,

Defendant and Appellant.

C070818

(Super. Ct. Nos. CR026928, CR025563)

On March 24, 2008, a complaint filed in Lassen County Superior Court charged defendant Michael Karl McNeil with assault with a deadly weapon on or about December 15, 2007, and violation of a restraining order on or about December 26, 2007. As to the assault charge, the complaint alleged that defendant had incurred a prior strike.

On July 31, 2008, a complaint filed in Lassen County Superior Court charged defendant of unlawful taking and driving of a vehicle, grand theft, and violation of a court order, all taking place on or about June 2, 2008. The complaint alleged that defendant committed the offenses while on release from custody.

On August 8, 2011, the trial court granted the People's motions to dismiss both cases in the interest of justice because defendant had been sentenced to a state prison term of 19 years in Los Angeles County.

On August 29, 2011, defendant in propria persona filed a “Motion to Seal and Destroy all Arrest Records” as to both cases, citing Penal Code section 851.8, subdivision (d).<sup>1</sup> The record does not show that the prosecuting attorney concurred in defendant’s motion, as required by Penal Code section 851.8, subdivision (d).

On March 20, 2012, the trial court denied the motion. The court’s order did not state reasons, but the court triply underscored “subdivision (d)” on the form.

Defendant filed a notice of appeal from the order denying the motion.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief raising the following issues: (1) Defendant’s motion to disqualify the trial judge for bias should have been granted. (2) Defendant’s motion to change venue (filed May 6, 2011) should have been granted. (3) Defendant’s request to disqualify the Lassen County District Attorney’s Office for bias should have been granted. (4) Defendant’s motions to dismiss should have been granted. (5) This court should vacate the order denying defendant’s motion to seal and destroy records and grant the requested relief. We conclude that the first four contentions are moot, and the fifth is meritless.

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<sup>1</sup> Penal Code section 851.8 provides generally that a person arrested but later determined to be factually innocent may petition for and obtain the sealing and destruction of all records in the case. Subdivision (b) provides that any superior court with territorial jurisdiction over the matter may grant such relief. Subdivision (d), cited by defendant, provides that if an accusatory pleading has been filed but no conviction has occurred, the court may grant the relief specified in subdivision (b) at the time of the dismissal of the accusatory pleading “with the concurrence of the prosecuting attorney.”

Defendant's first four contentions, all based on motions he filed in propria persona in his Lassen County case before their dismissal, are moot. On October 8, 2010, the trial court ruled that it would not proceed on any motion or request filed by defendant until he had made an appearance. Thereafter -- still without having ruled on any of defendant's motions, so far as the record shows -- the court dismissed the cases without trial in the interest of justice, and nothing in the record suggests that they will be refiled. Therefore, even if we were to find that any of defendant's motions had merit, there is no effectual relief we could grant as to them. (See *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 566.) Furthermore, defendant does not explain how any contention based on his predissmissal motions is pertinent to the postdismissal order denying his motion to seal and destroy records, from which this appeal is taken.

With respect to that order, defendant has shown no error. As mentioned above, he moved to seal and destroy records under Penal Code section 851.8, subdivision (d), which requires the prosecutor's concurrence. The prosecutor did not concur in the motion. The court therefore denied it, underscoring "subdivision (d)" (the prosecutor concurrence requirement) to signal the basis for the ruling. On appeal, defendant ignores this fact. Thus, his claim that the ruling was erroneous fails.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The order appealed from is affirmed.

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.